



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 11, 1998

Mr. Michael Bostic
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
Municipal Building
Dallas, Texas 75201

OR98-3060

Dear Mr. Bostic:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 120396.

The City of Dallas Police Department received a July 16, 1998, request for "a copy of the complete investigation on the murder of Santos Rodriguez." In response to this request, you sought a ruling from this office to which we responded in Open Records Letter No. 98-2250 (1998), dated September 18, 1998. You now submit information responsive to the request which you indicate only recently came to your attention. You seek to withhold portions of this information under sections 552.101 and 552.119 of the Government Code.

We note that since you failed to timely supply the information at issue here as provided by section 552.301(b)(3) of the Government Code, the information is presumed to be public. This presumption can be overcome by a demonstration that the information at issue is confidential by law or that other compelling reasons exist as to why the information should not be made public. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ); Open Records Decision No. 319 (1982); *see also* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense). In this instance, you claim that the information you seek to withhold is confidential by law. Accordingly, we will consider your claims.

You seek to withhold certain juvenile records under section 552.101 in conjunction with former section 51.14 of the Family Code. Current section 58.007(c) of the Family Code restricts release of juvenile law enforcement records. The act most recently amending section 58.007(c) provides that conduct occurring before the effective date of the act "is covered by the law in effect at the time the conduct occurred." Acts 1997, 75th Leg.,

ch. 1086, §§ 20, 53. Section 51.14 was adopted in 1973 as part of the codification of the Family Code. Acts 1973, 63rd Leg., ch. 544, § 1. From the time of its adoption in 1973 until its repeal in 1995, section 51.14 restricted release of juvenile law enforcement records. *See* Open Records Decision No. 644 (1996). Prior thereto statutory restrictions on release of juvenile records applied only to “juvenile court records.”

Section 15 of V.T.C.S. art. 2338-1, adopted in 1943, provided that “Juvenile Court records shall not be inspected by persons other than probation officers or other officers of the Juvenile Court unless otherwise directed by the court.” Acts 1943, 48th Leg., ch. 204, § 15. Section 15 was amended in 1969 by adding the proviso “but information on juvenile cases in the grade of felony shall be made available by the court to the agencies responsible for the implementation of the federal Omnibus Crime Control and Safe Streets Act of 1968 [citation omitted].” Acts 1969, 61st Leg., ch. 492, § 1.¹

The juvenile records you submit as responsive to the request here pertain to conduct which occurred in 1958, 1960, 1961, 1966, and 1972. The records relating to conduct occurring before 1969 are subject to section 15 of article 2338-1 as adopted in 1943 and quoted above. Unless these are “juvenile court records” protected by the 1943 provision, they must be released. The record pertaining to conduct in 1972, an arrest report, is subject to article 2338-1 as amended in 1969. It is not a court record protected by those provisions and therefore must be released.²

You also seek to withhold, under section 552.119 of the Government Code, a police officer’s photograph. Section 552.119 excepts from disclosure such photographs unless the officer is under indictment or charged with an offense by information, is a party in a fire or police civil service hearing or a case in arbitration, or the photograph is introduced as evidence in a judicial proceeding. Although subsection (a) of section 552.119 conditions its protection on the release “endanger[ing] the life or physical safety of the officer,” Open Records Decision No. 502 (1988) ruled that there need be no such threshold determination in order to withhold the photograph. That decision also found, however, that the section’s protection could be waived, in writing, by the officer. Another decision, Open Records Decision No. 536 (1989), ruled that the section’s protection did not apply where the office

¹The 1969 act also added a new section 15-A, which read:

If a child has been charged with a violation of a penal law of the grade of felony and if the child has previously been declared delinquent, officials concerned with the case shall release upon request information as to the name and address of the child and the alleged offense. Hearings on the case in the juvenile court shall be open to persons having a legitimate interest in the proceeding, including representatives of the news media; and juvenile court records shall be open to inspection by representatives of the news media.

Id.

²Open Records Letter No. 98-2250 (1998), dated September 18, 1998, is overruled to the extent of its inconsistency with this decision.

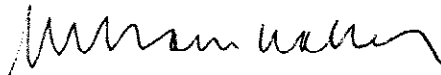
in question was no longer living. Unless the photograph here is subject to one of the exceptions to withholding incorporated in section 552.119, or the officer has waived the protection of the section or is no longer living, you may withhold the photograph in question.

You also seek to withhold certain information under section 552.101 in conjunction with common-law privacy. Section 552.101 protects information made confidential by judicial decision, including material protected by common-law privacy. Material is protected by common-law privacy if it is both highly intimate and embarrassing and of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We have marked personal financial information which we believe must be withheld under common-law privacy. See Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983) and authorities cited there.

We have also marked information which must be withheld under section 552.117(2) of the Government Code. That provision protects a peace officers home address, telephone number, social security number and family information. Except as noted above, the information at issue must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref: ID# 120396

Enclosures: Marked documents

cc: Ms. Adelfa Callejo
Callejo and Callejo
4314 North Central Expressway
Dallas, Texas 75206
(w/o enclosures)